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BRIEF IN SUPPORT OF HABEUS CORPS

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KENNETH PRICE (PRO-SE)
(SENTENCED UNDER KENNY PRICE)
PETITIONER,

CLERK
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ALA

V.

WARDEN J.C. GILES
AND THE ATTORNEY GENERAL
FOR THE STATE OF ALABAMA
RESPONDENTS,

POST- CONVICTION RELIEF
SOUGHT FOR PIKE COUNTY
CIRCUIT COURT CASE #
CC-02-134
CC-02-136

"ORAL ARGUMENT REQUESTED"

CHRIS DWAYNE WILLIAMS PRO-SE
REPRESENTATIVE FOR PETITIONER
ALLOMANGED BY CASE LAW PROVIDED
FROM WILLIAM HORSEMEN III, CPL
CERTIFIED PARALEGAL

CASE # 2:06CV236.W.K.W.

TABLE OF CONTENTS

FRONT COVER -----	1
STATEMENT REGARDING ORAL ARGUMENT-----	2
TABLE OF CONTENTS -----	3
STATEMENT OF JURISDICTION -----	4
TABLE OF AUTHORITIES -----	5-6
STATEMENT OF THE CASE -----	7
STATEMENT OF THE ISSUES -----	8
STATEMENT OF THE FACTS -----	9
STATEMENT OF THE STANDARD OF REVIEW -----	10
SUMMARY OF THE ARGUMENT -----	11
ARGUMENT -----	12
CONCLUSION -----	13
CERTIFICATE OF SERVICE -----	14

STATEMENT REGARDING ORAL ARGUMENT

- 1) THE PETITIONER STATES HE HAS A VOID INDICTMENT, WHICH DID NOT GIVE PROSECUTION NO JURISDICTION TO PROSECUTE.
- 2) THE PETITIONER STATES HE WAS SENTENCED ILLEGALLY UNDER (H.F.O.A.) HABITUAL FELONY OFFENDER ACT, AND THE LAW REQUIRES IMMEDIATE REVIEW OF SAID CHARGES (CASE # CC02-134 and CC-02-136) PIKE COUNTY CIRCUIT COURT
- 3) THE PETITIONER STATES THE TRIAL JUDGE LED THE JURY, WHICH VIOLATED HIS CONSTITUTIONAL RIGHTS; AND THE LAW REQUIRES A EVIDENTARY HEARING BE HELD AND OR IN THE ALTERATIVE ACQUIT OF SAID CHARGES, AND /OR REVERSE SENTENCING BY TRIAL JUDGE.
- 4) THE PETITIONER STATES HE HAD INEFFECTIVE ASSISTANCE OF COUNSEL, AND HIS COUNSEL NEVER WAS EFFICIENT ON FILING A MOTION TO QUISH INDICTMENT DUE TO ESSENTIAL ELEMENT 'INTENT' AND THE MODIFICATION OF ALL THREE COUNTS ON ONE PAGE (NOT 3 SEPERATE PAGES)
- 5) THE STATE FAILED TO CHARGE A OFFENSE LEGALLY, IN RHEA STATE OF MIND, WHICH IS A FAILURE TO ALLEGE AN ESSENTIAL ELEMENT IS A JURISDICTIONAL DEFECT. THE KIND OF DEFECT INVOLVED IN DUE PROCESS OF LAW AND IT CANNOT BE WAIVED.

STATEMENT OF JURISDICTION

JURISDICTIONAL ISSUE PRESENTED FOR REVIEW BY TRIAL COURT, AND APPELLATE COURT IN WHICH INEFFECTIVE ASSISTANCE OF COUNSEL WAS GROUND RAISED IS EVIDENT FOR REVIEW. JUDGE LEAD JURY DURING TRIAL COURT PROCEEDINGS, AND ALSO ATTORNEY NEVER FILED MOTION TO QUISH INDICTMENT, MANY ERRORS HE STATED VIOLATING PETITIONER DUE PROCESS AND CONSTITUTIONAL RIGHTS TO A FAIR TRIAL. LAWYER WAS INEFFECTIVE THOUGHOUT THE HOLD MATTER AND COULD NOT PROPERLY FORMULATE A RESPONSE, AND EVEN FAILED TO EXPLAIN THE STEPS OF THIS CASE TO HIS CLIENT.
THE ATTORNEY WAS JAMES THOMAS

TABLE OF AUTHORITIES

- 1) HARTMAN V. SCOTT (1973, CA8 minn)488 F.2d 1215.
- 2)C.A. 11(Ala) 1991. Smelcher V. Attorney General of Alabama, 947 F.2d 1472.
- 3) McConnell V. State 586 So.2d 971 (Ala. Crim. App. 1991
- 4) Bates V. State 620 So .2d 745,746(Ala. Crim. App.1992)
- 5) Ex Parte Rice 565 So.2d 606,608(Ala.1990).
- 6) Charest V. State 517 So.2d 643,644 (Ala.Cr.App.1987)
Id. at 718.
- 7) U.S.C.A. Const. Amends 5,6,United States v. Hooker 841 F.2d 1225, 1228.) 4th Cir. 1988(enbanc) See United States V. Shelton 848 F.2d 1485 1494 .(10th Cir. 1988)
- 8) Rule 12.8 (B) Rules of Cr. Proc.
- 9)Mackey V. Miller (1503,Caq Cal)126 F.161
Manning V Biddle 14F.2d 518
Brown V.White 24 F.2d 392
Brock V. Hudspeth III F.2d 447
Straus V. United States (1965) 342 F.2d 813
United States V. Ilodi (1997, Dc md) 982 F.supp.1046, App. dismd, Post conviction proceeding (1998,Ca. Md.) 1998 US App. Lexis 6912.

- 10) Federal Rules of Appellate procedures Rule 23 (A)
- 11) Fed. Rules of Evidence Rule 403 Commentary
- 12) Rules of Evidence rule 801 (c)
- 13) Rodney Lemen Logmen V. State of Alabama 870 So.2d 762
(Ala. crim.app,2003)
United States V. Gordon 550 F.2d 206, 211 (5th cir.1977)
Purvis, 580 F.2d at 858. Ex Parte Lewis 811 So,2d 485
(Ala. 2001) Kennedy V. State 3a. Ala. app.67 6,107 so.2d 913
(1958) Rule 13.5 Ala. R. Crim. Tinsley V.State 485
so. 2d 1244, 1251 (Ala. Crim. App.(1986)

STATEMENT OF THE CASE

THE PETITIONER KENNETH PRICE WHO HAD BEEN ILLEGALLY SENTENCED BY THE JUDGE UNDER (KENNY PRICE) IN WHICH IS A NAME BEEN USED BY THE PETITIONER WAS ILLEGALLY INDICTED IN THE STATE OF ALABAMA, PIKE COUNTY CIRCUIT COURT IN THE MARCH TERM, @))@. THE CHARGES WAS SAID DISTRIBUTION OF A CONTROLLED SUBSTANCE. THE INDICTMENT WAS TURNED OVER TO A GRAND JURY , IN WHICH WHEN THIS WENT TO TRIAL THE JUDGE LEAD THE JURY AND CHOSE HIS OWN FOREMAN. DURING THE DAYS OF TRIAL THE JURY DEMANDED MORE EVIDENCE AND WAS TOLD THERE WAS NOT ANY. THE JUDGE MADE THE THREATS ABOUT RULING ON THIS CASE OR ELSE LOOK AT GOING TO JAIL. THE LAWYER APPOINTED NEVER MADE NO OBJECTIONS AND DID NOT PROPERLY FILE FOR THIS TO BE QUASHED. THE PETITIONER WAS ILLEGALLY CONVICTED BY A LEAD JURY, AND ILLEGALLY SENTENCED UNDER THE HABITUAL FELONY OFFENDERS ACT: DUE TO ONLY HAVING ONE SAID CHARGE AGAINST HIM AS A NEGOTIATED PLEA THE LAWYER APPOINTED HAD FILED A MOTION TO WITHDRAW WHO WAS JAMES THOMAS;AND LLOYD W. CARR WAS APPOINTED AS THE APPELLATE COUNSEL. LLOYD CARR DID NOT UNDERSTAND THE MATTER AND FILED A NO MERITS BRIEF,IN WHICH WAS INEFFECTIVENESS BY HIM. THE PETITIONER LATER HAD FILED WITH ALABAMA COURT OF CRIM. APP. PRO-SE, THE COURT OF CRIM.APP. FILED FOR MOTION OF EXTENSION OF TIME; NEVER MADE A DECISION. (NOTE THIS WAS SAME TIME ROY MOORE WAS IN THIS SAME COURT SO THEY WERE MORE THAN OVERBOOKED). THE CASE LATER WAS FILED WRIT OF CERTIORARI, IN WHICH IT WAS SENT TO THE WRONG COURT AND DENIED BY SUPREME COURT. A RULE 32 WAS FILED AND LATER DENIED, AND THE 'JAILHOUSE' LAWYER NEVER APPEALED FROM THAT DECISION WHICH ALSO WAS A ERROR IN APPELLATE PROCEDURES. THE PETITIONER VOID INDICTMENT AND COPY WHERE WHIT OF CERTIORARI SENT TO THE WRONG COURT SHALL BE (EXIBIT A AND B). IT IS THE BURDEN OF THE RESPONDENTS TO SEND FOR ALL TRIAL AND APPELLATE TRANSCRIPTS.

STATEMENT OF THE ISSUES

- 1) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL
 - 2) CONVICTION OBTAINED BY PETIT OR GRAND JURY ILLEGALLY
 - 3) VOID INDICTMENT
-
- 1) IF THE PETITIONER HAD EFFECTIVE COUNSEL, HE NEVER WOULD OF BEEN CHARGED OR CONVICTED AND SENTENCED ILLEGALLY
 - 2) IF THE GRAND JURY HAD NOT BEEN LEAD TO MAKE A DECISION THE PETITIONER WOULD HAVE BEEN FOUND NOT GUILTY.
 - 3) A VOID INDICTMENT GIVES NO JURISDICTION FOR THE STATE TO PROSERUTE OR SEEK NO CONVICTION; BUT IS THE GROUNDS FOR RELIEF.

STATEMENT OF THE FACTS

THE PETITIONER IS REQUESTING 'ORAL ARGUMENT' AND
APPOINTMENT OF COUNSEL TO DISPUTE HIS INNOCENCE.

STATEMENT OF THE STANDARD OF REVIEW

C.A.11(Ala.)1991. Ineffective assistance of counsel maybe cause for procedural default in State court of an issue raised in a federal Habeas Corps petition. Smelcher V. Attorney General of Alabama, 946 F.2d 1472.

Hopson V. State 352 So.2d 500, 502.
However circumstantial evidence justifies a conviction only when it is inconsistent with any reasonable theory of innocence.

McConnell V. State 586 So.2d 971 (Ala. Crim. app. 1991)
At trial court has no authority to sentence a defendant under the Habitual Felony Offender Act until proper notice and proof of the prior convictions have been presented: upon resentencing, a trial court may consider, for purposes of the Habitual Felony Offender act, only those prior convictions of which the defendant received proper notice before the initial sentencing.

The Laws of Alabama requires review of this matter by the court available, and no time bar, nor procedural default can be used due to ineffective assistance of counsel.

SUMMARY OF THE ARGUMENT

THE PETITIONER REQUEST 'ORAL ARGUMENT' AND ATTORNEY
BE APPOINTED TO FURTHER SAFEGUARD HIS RIGHTS.

ARGUMENT

'ORAL ARGUMENT' REQUESTED

CERTIFICATE OF SERVICE

I KENNETH PRICE(KENNY PRICE) DO HEREBY CERTIFTY
I HAVE SENT A COPY OF THIS BRIEF IN SUPPORT OF HABEAS CORPUS
UPON:

ATTORNEY GENERAL FOR
STATE OF ALABAMA
!11SOUTH UNION STREET
MONTGOMERY AL.
36130-0152

UNITED STATES DISTRICT COURT
P.O. BOX 711
MONTGOMERY, ALABAMA
36101

BY PLACING A COPY OF THE SAME, ALL POSTAGE PRE-PAID.
THIS 27 DAY OF MARCH, 2006.

Kenneth Price PRO-SE
OF COUNSEL